

January 28, 1999

Ms. Kelly Fletcher Schurr
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— ★ —

JOHN CORNYN
Attorney General

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OR99-0278

Dear Ms. Schurr:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121624.

The City of Dallas (the "city") received a request for all information the city received while processing the requestor's claim. You state that most of the information will be released. However, you claim that the submitted document is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the document at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551

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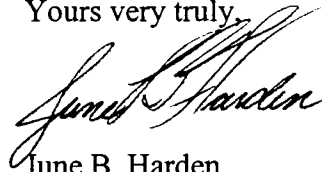
at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the city has received a notice of claim arising from a towing incident. You also state, for the purposes of the Open Records Act, that the claim letter complies with the notice requirements of Chapter XXIII of the Dallas City Charter. We conclude that litigation is reasonably anticipated. Open Records Decision No. 638 (1996). We also conclude that the document submitted by the city is related to the anticipated litigation and may be withheld pursuant to section 552.103.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 121624

Enclosures: Submitted documents

cc: Mr. David Hatzenbuehler
10505 Chesterton Drive
Dallas, Texas 75238
(w/o enclosures)